

Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,
Plaintiff,

vs.

COMMONWEALTH OF PENNSYLVANIA,
NINTH JUDICIAL DISTRICT,
CUMBERLAND COUNTY; CUMBERLAND
COUNTY; S. GARETH GRAHAM,
Individually, and JOSEPH
OSENKARSKI, individually,
Defendants.

CIVIL ACTION
NO. 1:CV 01-0725

(JUDGE YVETTE KANE)

Deposition of: **SAMUEL MILLER**

Taken by : Defendant

Date : April 28, 2003, 12:11 p.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Administrative Office of Pennsylvania
Courts
5034 Ritter Road
Mechanicsburg, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
BY: A. TAYLOR WILLIAMS, ESQUIRE
For - Defendant Commonwealth of Pennsylvania
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAFFER
BY: PAUL J. DELLASEGA, ESQUIRE
For - Defendant Cumberland County

STIPULATION

1
2 It is hereby stipulated by and between the
3 respective parties that sealing, certification and
4 filing are waived; and that all objections except as to
5 the form of the question are reserved until the time of
6 trial.

7
8 SAMUEL MILLER, called as a witness, being
9 duly sworn, was examined and testified, as follows:

10 BY MR. DELLASEGA:

11 Q. Mr. Miller, my name is Paul Dellasega. I'm an
12 attorney for Cumberland County in the action brought by
13 Barbara Varner against the county and others.

14 Have you ever testified before, sir?

15 A. Yeah. Not in this, but yeah, I was a police officer.

16 Q. Okay. When were you hired by the county or by the
17 court -- that's a loaded question.

18 When did you become a probation officer?

19 A. With Cumberland County, on December 15th, '83.

20 Q. When did you first meet Mrs. Varner?

21 A. Whenever she was hired, I think. Barb used to work for
22 Children and Youth. It's possible I met her, I
23 probably met her when she was working for Children and
24 Youth. I can't say that I specifically recollect. I
25 know I certainly met her when she came to work for us.

1 Q. Directing your attention to the period before Probation
2 split into two separate departments, did you ever
3 observe Graham to yell at Mrs. Varner? Prior to the
4 split.

5 A. Yeah. I can't say that I specifically remember
6 observing an instance where Gary was yelling at Barb.
7 I do have a memory that at one point in time Gary being
8 upset, where he would come into our office and he was
9 agitated. And I think one time I went into his office.
10 I don't remember the specifics, but the general gist of
11 the situation was I think Gary was frustrated or upset,
12 at least that's what I perceived. And it was -- I
13 said, what's going on? And he said that this is, I'm
14 paraphrasing, I really don't remember the specifics,
15 but he said that he was frustrated that she had brought
16 some work to him that he was trying to help her with,
17 correct, change, and that he felt she was being
18 defensive and not responding to what he wanted her to
19 do, and that was frustrating him. And he was, I call
20 it work product, he was frustrated with her work
21 product. And I remember saying, you know, relax,
22 because he seemed upset to me. I says, relax, and you
23 guys are friends, you know, work it out.

24 Q. Let me ask you this. Was there any point in time where
25 from your observation Graham and Varner were good

1 personal friends?

2 A. I thought they were friends, yeah.

3 Q. Okay. Was there a point in time where that changed,
4 your observation?

5 A. Yeah. I mean, obviously. I can't remember the time
6 scenario, but right before we became aware of the, I
7 think it was right before, right before the lawsuit was
8 filed, you know, we had gone out to Reno as a group and
9 we came back and then I'm hearing all this secondhand
10 and stuff, but then this lawsuit came down. Well, I
11 thought they went -- I can't remember the sequence but
12 I thought, my, that they went from being friends to
13 having a strained relationship.

14 Q. Okay. That transition from being friends to having a
15 strained relationship, to your recollection was there
16 an abrupt shift or a gradual shift?

17 A. I'm not sure if I could -- I guess it was over a couple
18 months. I'm not really sure. I wasn't real close to
19 it. I guess considering how long they knew each other,
20 it was relatively abrupt, but I'm not really sure if
21 that's a fair characterization or not.

22 Q. All right. Before the relationship became strained,
23 did you ever observe Graham to yell at Varner?

24 A. It's possible it happened. I can't remember a
25 specific.

I'll say this, you know, there was times Gary and I yelled at each other, you know what I'm saying, where we would get mad at each other. Might have been my fault, might have been his fault. So it wouldn't have been unusual in our office at that time to have a loud exchange. It wasn't like anything we ever -- that I ever felt we permanently held a grudge over. So it's possible it happened between him and Barb. I can't specifically recollect a day that it happened or anything like that.

Q. When you say the relationship became strained, describe their interaction before it became strained as compared with their interaction after it became strained.

A. Well, they were friendlier, they got along better. I mean, there wasn't -- I guess maybe the most accurate way for me to describe it is that my saying that it became strained was that when I became aware that he was frustrated and upset, and I don't know if uncomfortable is the right word, but didn't like her work product, you know. Then I realized that he wasn't all that pleased with her work performance. You know, at least I suspected that.

But I thought it was something they would work out, you know. I didn't think it was a real big deal. I mean, it wasn't unusual in our office at that time

1 for two people to maybe have a spat over something
2 and/or maybe they -- we had a lot of -- we work in a
3 pseudo science. There's a lot of, this is just my
4 opinion, there's a lot of different ways to accomplish
5 maybe the same end result. We don't always have black
6 and white answers to the problems we deal with. So it
7 wasn't unusual for people to have disagreements about
8 how to accomplish something, sometimes professionally
9 argue it out. Sometimes somebody would lose their
10 temper and say, you know, you're a bozo, you shouldn't
11 be doing it that way, you know. That wasn't all that
12 unusual. It was kind of -- it's kind of the nature of
13 the job, high stress. A lot of negatives go along with
14 the job in terms of people criticizing us. So there
15 were those kind of interactions.

16 I can't say that, like I said, I can't
17 specifically remember what days or when they happened
18 or between all of it, I mean, I just felt -- I felt
19 like it was that kind of environment from time to time.

20 Q. Okay. After the relationship became strained, did you
21 observe Mr. Graham treat Mrs. Varner worse than he
22 treated any other employee in the office?

23 A. I did not see specific instances of that occurring. I
24 mean, obviously I know that Barb feels that way, that
25 things changed. But I can't -- maybe if someone can

1 very comfortable picking out a specific instance and
2 saying, yeah, that was sexual harassment. I think in
3 our office you might be able to make a case because we
4 weren't educated because -- I don't know why, how I
5 would characterize it. Our office might have been in a
6 situation where we all could have acted a little
7 better, you know, been a little more informed about it,
8 you know, things like that, you know.

9 Q. But to be specific, you never heard Graham ask
10 Mrs. Varner for any type of sexual favor?

11 A. Oh, no. No, I never -- I wasn't aware of anything like
12 that.

13 Q. You never heard Graham say anything to Mrs. Varner that
14 had sexual overtones to it?

15 A. I don't think so, no. No.

16 Q. Comparing female probation officers with male probation
17 officers, did Graham treat the female probation
18 officers as a class any worse than he treated male
19 probation officers as a class?

20 A. I don't know. I really don't know.

21 Q. Can you think of any instance where he treated a woman
22 worse than a man because she was a woman?

23 A. I don't know. I mean, I know that Gary treated
24 every -- like, him and I were on friendly terms so I
25 know that -- I felt like Gary and I had a good

relationship when I worked in the office. And I believe there was other people in the office that probably felt like they were treated differently by Gary than someone like me was. But I don't know if that extends to a specific class or not as far as, you know, the women feeling -- well, obviously, there's been plenty of dialogue about this whole suit. They probably do feel somewhat differently. Certainly Barb feels that way, and maybe some of the other ones do. But I can't say that I know of a specific situation that pointed that out to me.

Q. When you look at Mr. Graham's friendships, can you comment for me as to whether he tended to be friendlier and act nicer with the older, more senior probation officers as compared with the newer ones?

A. I have to think about that. I mean, I -- he was certainly, my perception was that Gary was friendly with us, me, Denny, Hank, you know, Tom Boyer. We had been there longer and I think, you know, we had worked with him a long time, you know, so I thought we had a friendly relationship, some of us more than others, you know. But I thought Barb was friendly with him.

I don't think I would say that the new people weren't friendly with him or anything like that, you know what I'm saying, but he was probably more

1 said that about I guess an intern. I don't know. You
2 know, I didn't hear it. I heard people in the office
3 talking about it.

4 Q. But you have no personal knowledge of it?

5 A. No. I don't think I was there when Joe said it or when
6 he was accused of it being said.

7 Q. Have you ever heard anything said about new interns in
8 general being told at the first department meeting you
9 have to dance on the tabletop for us?

10 A. Us telling interns to go in --

11 Q. Right.

12 A. I've never been in any meeting -- I can't -- we're not
13 going to do that. You know, that's pretty dumb.

14 Q. Did you ever hear Graham tell Varner any of the
15 following: That she has no fucking sense, no fucking
16 training or no fucking ability?

17 A. No. I never heard that. I'm not saying he didn't say
18 that when he was mad, but I don't recollect him saying
19 that, you know. He told me that once or twice.

20 Q. Told you that?

21 A. No, I'm just kidding. I'm sorry.

22 Q. If you and he had a heated conversation, would that be
23 typical language he might have addressed you to?

24 A. We might have swore at each other. I think I was worse
25 than him in that regard.

1 Q. Have you ever been counseled not to help Barbara Varner
2 with regard to any complaint she's made about Graham?

3 A. No. No. As a matter of fact, I figured I'd end up
4 here some day if this thing proceeded, because I was
5 made her supervisor as part of a corrective action
6 plan. As a matter of fact, Barb and I were just
7 talking about this the other day, because I couldn't
8 remember the date and she was able to get me the date.
9 It was June 17th of '97.

10 And it wasn't my idea. But Joe came to me -- I
11 don't really remember Gary coming to me. He might have
12 because it's been a while. But I remember Joe coming
13 to me and saying we need to you do this. My perception
14 was that I was doing him a favor, that it was something
15 that needed to be done to help correct the problem in
16 the office.

17 And I will say this. I knew that Gary, after the
18 suit was filed it was apparent to me, not maybe by a
19 specific action but just in general my sense was that
20 Gary wasn't happy with the situation. But I'll give
21 him credit, he never came to me at the time I
22 supervised Barb Varner, and we were pretty comfortable
23 with each other. I wouldn't say we were best-best
24 friends, like, we didn't grow up together, but we were
25 friendly. But he never came to me and said, you better

1 be tough on her, or you better do this, or you better
2 do that. I was, you know, I didn't feel like I was in
3 a very comfortable position because I didn't really
4 have authority. I had just been put in charge of her
5 because Joe thought that would be best.

6 I found out later I think Barb requested it. You
7 know, I had never had any conversation with Barb about
8 that, you know, prior to that. I didn't know that was
9 going to be -- it wasn't something I solicited or that
10 I anticipated. I guess I'm rambling on. But you know,
11 Gary never came to me and said, please do this, or
12 check on this, or blah blah blah blah blah. That
13 didn't happen.

14 Q. Do you have any supervisory role over Mrs. Varner
15 today?

16 A. Yeah, I'm her supervisor. Since, I think I have this
17 straight, since May 1st when we did the reorganization
18 I directly supervise her. Prior to that, May 1st of
19 2000, and this is '03, 2002, we did a reorganization in
20 our office and I directly supervise her.

21 Prior to that, I was one of the supervisors in the
22 office since July 1st, '01. So it hasn't been very
23 long. So I was a supervisor but I directly became her
24 supervisor in on May 1st, 2002.

25 Q. Can you discuss for us whether it takes a period of

1 tuned in. I should have probably -- as a supervisor I
2 have to be more sensitive to these things. I wasn't
3 real turned in to what he was doing with other people
4 all the time. I really -- and honestly, I didn't
5 really care. I wasn't -- I mean, I cared how he dealt
6 with me, you know.

7 Q. Let me ask you this. Within the range of what is
8 normal behavior for Graham when supervising other
9 employees, did you observe him to act normally with
10 Mrs. Varner, or to be abnormally harsh, abnormal
11 critical, abnormally abusive?

12 A. I thought they were good friends. I mean, I thought
13 they were good friends until a brief period of time, a
14 relatively brief period of time either right about the
15 time of the lawsuit or maybe a little before, I can't
16 swear as to my time frame, where I thought their
17 relationship was more strained.

18 Q. But did that strained relationship manifest itself in
19 Mr. Graham behaving more abusively to Mrs. Varner than
20 to other employees in the office who he also
21 supervised?

22 A. I think Barb felt that way.

23 Q. Did you observe that?

24 A. Did I personally observe that?

25 Q. Yes.

1 A. No, I can't say that I did. I remember one time him
2 coming into my office where he was agitated and upset,
3 expressed he was agitated and upset, and as a result of
4 that I went over and had a conversation with him in his
5 office. He explained to me it was about work product,
6 and I can't remember the specifics, but I -- he
7 basically said he was frustrated because he felt that
8 he was trying to help her do certain things better,
9 that she was being defensive and, you know, he wasn't
10 happy about that. He was frustrated about that.

11 And I think my take to the whole thing, I don't
12 even know why I was sticking my nose in it, I possibly
13 just was having one of those days and I just said, you
14 know, like, chill out, don't get so worked up over it.
15 And that was about, that was it. I wasn't really into
16 management at that time.

17 I think, I think it must have on that particular
18 incident elevated me to a point that I was a little
19 concerned that he was pretty upset on that specific
20 incident.

21 MR. DELLASEGA: That's all I have.

22 BY MR. MacMAIN:

23 Q. My name's Dave MacMain. We met just before the
24 deposition. I represent Gary Graham. I just have a
25 couple areas I wanted to ask you about.

1 happy about it. But you know, he pretty much kept it
2 to himself. He's kind of, like, a strong guy that just
3 kind of deals with it on his own.

4 Q. Did Mr. Osenkowski ever use the F word in your
5 presence?

6 A. I can't specifically remember that. He might have. I
7 will tell you this, I'm not proud of it, I probably
8 swear more than him. When him and I were together I'm
9 sure I used it to him. He might have said it to me. I
10 can't give you a specific time or instance that he said
11 it to me, you know, but it wouldn't have been beyond us
12 to curse.

13 Q. Did Mr. Graham use the F word in your presence?

14 A. I'm sure that -- Gary has more -- I always considered
15 Gary to have a little more sophistication than I did.
16 I'm a little rougher around the edges. I curse a lot.
17 It's something I've tried to change, you know. I
18 realize it's important in an office environment not to
19 do that.

20 I think sometimes he cursed when we were talking.
21 I think what happens is I possibly started -- you get
22 caught into that kind of conversation, you know, and --
23 but he wasn't as bad as I was when it came to the
24 cursing. But sometimes when we got together I think we
25 did it.

1 Q. Were these swear words, and let's limit it to the F
2 word at the moment, used in front of female probation
3 officers?

4 MR. ADAMS: Used by whom?

5 MS. WALLET: Either one.

6 THE WITNESS: It's possible. I don't specifically
7 recollect. It wasn't anything that, you know, I would
8 try to have done, you know. It's possible maybe they
9 overheard me or something at some point in time when,
10 you know, when I didn't mean them to. I can't -- no
11 one ever came to me and said, hey, stop your cursing
12 or -- that I'm aware of or anything like that, you
13 know.

14 BY MS. WALLET:

15 Q. Okay. Let me ask a more specific question. Did you
16 ever hear Gary Graham use the F word in front of female
17 probation officers?

18 A. I can't remember. I'm not telling you that it didn't
19 happen. It's possible. I can't remember a specific
20 instance where Gary was F this or F that.

21 We did have -- I mean, I want to be honest with
22 you, we had a pretty, what I considered to be a pretty
23 rough office environment in that, I'm not saying this
24 makes it right, but there would be profanity. And it's
25 certainly possible that in communicating that there was

1 profanity used in front of female POs.

2 I kind of, I would consider, you know, like I know
3 Barb was our friend. I mean, I wasn't as close to her
4 as Gary was, you know. I don't know if you would
5 consider us friends. We actually -- we kind of went
6 our own ways. But I could have seen people being
7 comfortable enough to swear in front of her, you know.
8 Not saying that that's right, but it could have
9 happened.

10 Q. Did you ever observe Mr. Osenkarski to use the F word
11 in front of female probation officers?

12 A. Again, it's possible. I feel bad, like I'm such a --
13 if you guys swore it wouldn't stick out in my mind
14 enough that I'd say, oh, he shouldn't have done that,
15 you know? I have to work on those kind of things.

16 He might have. I don't remember it. It never --
17 there's no specific incident where I remember him doing
18 that, where I thought to myself, oh, he shouldn't have
19 talked like that to a female probation officer.

20 Q. Did either Mr. Graham or Mr. Osenkarski ever tell you
21 as your supervisor that such language was not
22 appropriate in the office?

23 A. I don't think so. I mean, I don't want to make it
24 sound like it was terrible. I mean, every once in a
25 while we would get upset and we would curse and swear,

1 A. I don't know. I don't know. If she says I did,
2 then -- during that time frame when their relationship
3 was strained? I might have said that. I might have
4 been referring to that.

5 Q. Further, since that time Gary has refused to even speak
6 to them and is mad with all of them.

7 Did you say that?

8 A. Yeah, I probably did. He is. He's been upset with us.
9 That's my perception.

10 Q. Miller also said that Gary is the type of person who
11 believes it is my way or no way. I'm quoting exactly
12 now.

13 Did you say that?

14 A. I don't remember, but I do believe that he's a very
15 single-minded, strong-minded individual and I do
16 believe that -- well, I'll put it this way. I've given
17 a lot of thought to that. You know, in the
18 beginning -- I've kind of gone through a transition on
19 this, too. I've felt that Gary was the type of person
20 that if you disagreed with him, you would pay, so to
21 speak. And when I was being called here for deposition
22 and as this has evolved I sat down and I thought about
23 it, and I can tell you that based on my personal
24 experience, I was wrong about that. Gary and I
25 disagreed plenty of times. He never did anything to

1 me, okay?

2 My impression, it's true my impression was that if
3 you messed with Gar and he got upset with you, that he
4 wasn't the type of person that would often be
5 magnanimous and say, well, it's okay if you disagree
6 with me. That was an opinion I had. All right? I
7 can't say that he ever did that to me.

8 Q. Did he ever use the words in your presence, "people
9 will be punished" or "we'll get even"?

10 A. It's -- I don't recollect those words specifically. I
11 mean, I know the guys have joked around the office
12 where, oh, you're in trouble now, you're going to get
13 three cases tomorrow, you're going to be punished. I
14 mean, we still joke about that somewhat. I'm sure that
15 he probably said something like that.

16 If you're telling me give you a time, a date and
17 testify under oath that I'm sure he said it, I'm not.
18 I think that sometimes we got into banter like that, if
19 him and I were in an argument where I might have said,
20 hey, don't punish me by giving me three extra cases or
21 something like that, you know, so. It wasn't a part of
22 dialogue that I can recollect specifically, but it
23 might have been said, you know.

24 Q. He characterized GG as a vindictive type of person.
25 Did you tell the EEOC that?

1 A. I might have. I mean, I think he can be if he's upset.

2 Q. What do you remember about what you told to the EEOC?

3 A. Here was what I remembered. Obviously, I don't
4 remember the specifics. I remember the conversation
5 being that as far as the sexual harassment, I knew
6 nothing. I had no idea anything was going on between
7 the two of them, and I had no idea as to any specific
8 incidents that had on occurred that in my primitive
9 brain I'd say, well, boy, that's sexual harassment.

10 I do remember saying that, yeah, there was times
11 Gary could lose his temper or be angry and act like an
12 ass. I mean, I did that, too. I remember, you know,
13 Gary saying to us one day kind of half jokingly where
14 he said, well, you know, how can it be discrimination,
15 I'm an ass to everybody sometimes, you know, something
16 of that nature, you know. That was the picture I
17 thought I presented to the EEOC. Yes, Gary could, if
18 he got upset with you, be hard to deal with, that he
19 could be angry.

20 In terms of discrimination, did he pick Barb out
21 and that there was a sexual discrimination involved? I
22 just -- I'm not saying it didn't happen, I'm just
23 saying I just didn't have a lot of knowledge about
24 that. I wasn't tied into being privy to that. I don't
25 know what conversations occurred. That's what I

1 could get done early.

2 I do remember conversations in the office where
3 there were times you might not take off till noon or
4 1:00 and the gist was you needed to have a good reason
5 for that. You know, you needed to not be stealing from
6 the county, so to speak.

7 Q. Did anyone dock your pay for having started a
8 commitment trip at some time other than 8:00 or 8:30 in
9 the morning?

10 A. Me? No. No.

11 Q. Okay. Now, you said that you and another probation
12 officer went to see Judge Hoffer prior to the action to
13 transfer Gary Graham to the prison, correct?

14 A. Judge Sheely.

15 Q. I'm sorry.

16 A. Judge Sheely.

17 Q. Okay.

18 A. We went to see Judge Sheely. So, about what point in
19 time was that? You know, obviously it was after the
20 lawsuit it was filed. I believe it was after I was
21 appointed Barb's supervisor in June of '97.

22 Q. So you think it was sometime in the summer of 97?

23 A. I'm not saying that. I really don't -- well, Judge
24 Sheely left in December of '97.

25 Q. Correct.